

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

THOMAS LOGAN
Plaintiff

V.

NO. 3:96CV103-B-A

PENNACO HOSIERY, an Operating
Division of Danskin, Inc., and
DANSKIN, INC., Individually
Defendants

MEMORANDUM OPINION

This cause comes before the court upon the defendants' motion for partial summary judgment. The court has duly considered the parties' memorandum and exhibits and is ready to rule.

FACTS

The plaintiff was employed in the maintenance department of the defendant, Pennaco Hosiery, with a job title of Maintenance Service/Boiler. He was injured on the job on September 4, 1994, and subsequently terminated by the defendant on September 12, 1995. At the time of his termination, the plaintiff was 63 years of age, and he was allegedly replaced by a younger person. The plaintiff's injury prevents him from performing heavy labor, though he asserts that he could, with reasonable accommodation, perform the duties of the position of Maintenance Service/Boiler.

Shortly after his termination, the plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission (EEOC), asserting disability discrimination in violation of the Americans with Disabilities Act (ADA). The plaintiff received notice of the right to sue, and subsequently filed suit for age

discrimination in violation of the Age Discrimination in Employment Act (ADEA), disability discrimination in violation of both Title VII of the Civil Rights Act of 1964 and ADA, and for violations of both the state and federal Constitutions. While the plaintiff's complaint contains specific allegations of age and disability discrimination, it fails to mention the constitutional claims after the introductory paragraph.

LAW

On a motion for summary judgment, the movant has the initial burden of showing the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 91 L. Ed. 2d 265, 275 (1986) ("the burden on the moving party may be discharged by 'showing'...that there is an absence of evidence to support the non-moving party's case"). Under Rule 56(e) of the Federal Rules of Civil Procedure, the burden shifts to the non-movant to "go beyond the pleadings and by...affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" Celotex Corp., 477 U.S. at 324, 91 L. Ed. 2d at 274. That burden is not discharged by "mere allegations or denials." Fed. R. Civ. P. 56(e). All legitimate factual inferences must be made in favor of the non-movant. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 91 L. Ed. 2d 202, 216 (1986). Rule 56(c) mandates the entry of summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of

proof at trial." Celotex Corp., 477 U.S. at 322, 91 L. Ed. 2d at 273. Before finding that no genuine issue for trial exists, the court must first be satisfied that no reasonable trier of fact could find for the non-movant. Matsushita Elec. Indus. v. Zenith Radio Corp., 475 U.S. 574, 587, 89 L. Ed. 2d 538, 552 (1986).

The defendants have moved for summary judgment as to the plaintiff's claims for age discrimination and constitutional violations. Since the plaintiff's complaint fails to allege any facts to support a violation of either the Mississippi or United States Constitutions, the court finds that the defendants' motion for summary judgment should be granted as to the plaintiff's constitutional claims.

The defendants move for summary judgment on the plaintiff's claims for age discrimination on the grounds that the plaintiff failed to raise age discrimination in his charge with the EEOC. As a condition precedent to filing suit under the ADEA, a plaintiff must first file an administrative charge with the EEOC. 29 U.S.C. § 626(d); Foster v. National Bank of Bossier City, 857 F.2d 1058 (5th Cir. 1988). The plaintiff's EEOC charge alleges only disability discrimination in violation of the ADA, and cites no facts which would give rise to a charge of age discrimination. A plaintiff may not litigate claims that were not encompassed in or reasonably related to his EEOC charge. Young v. City of Houston, 906 F.2d 177, 179 (5th Cir. 1990); Hornsby v. Conoco, Inc., 777 F.2d 243, 247 (5th Cir. 1985). While allegations of discrimination which are reasonably related to the EEOC charge, or which may be

reasonably expected to grow out of such charge during the pendency of the EEOC investigation can be included in the judicial complaint,¹ the plaintiff's allegations of age discrimination are entirely distinct from the allegations of disability discrimination contained within the plaintiff's EEOC charge. Not only does the plaintiff fail to assert the theory of age discrimination in his EEOC charge, but he further fails to cite any facts which would reasonably lead the EEOC to investigate age discrimination. The only mention of the plaintiff's age in the charge is where he lists his date of birth in the appropriate box. Since the plaintiff fails to assert any facts in his EEOC charge that are reasonably related to age discrimination, the court finds that the defendants' motion for summary judgment should be granted as to the plaintiff's claims for violation of the ADEA.

CONCLUSION

For the foregoing reasons, the court finds that the defendants' motion for partial summary judgment should be granted. An order will issue accordingly.

THIS, the _____ day of January, 1997.

NEAL B. BIGGERS, JR.
UNITED STATES DISTRICT JUDGE

¹ See Ray v. Freeman, 626 F.2d 439, 442-443 (5th Cir. 1980), cert. denied, 450 U.S. 997, 68 L. Ed. 2d 198 (1981); Sanchez v. Standard Brands, Inc., 431 F.2d 455, 466 (5th Cir. 1970) (citing King v. Georgia Power Co., 295 F. Supp. 943 (N.D. Ga. 1968)).